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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

2008 JUL 7 PM 12:32

UNITED STATES OF AMERICA,)
 Plaintiff,)
 v.)
 Jay William JOHNSTON)
 Defendant.)
 _____)

'08 MJ 2060

Magistrate Case No. _____

COMPLAINT FOR VIOLATION OFTitle 8, U.S.C., Section
1324(a)(2)(B)(iii)-
Bringing in Illegal Alien(s)
Without Presentation

The undersigned complainant being duly sworn states:

On or about **July 5, 2008**, within the Southern District of California, defendant **Jay William JOHNSTON**, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that aliens, namely, **Antonio MARTINEZ-Mares** and **Benito AVILA-Elena**, had not received prior official authorization to come to, enter and reside in the United States, did bring to the United States said aliens, and upon arrival did not bring and present said aliens immediately to an appropriate immigration officer at a designated port of entry; in violation of Title 8, United States Code, Section 1324(a)(2)(B)(iii).

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.



SIGNATURE OF COMPLAINANT
Sara R. Esparagoza, United States Customs
and Border Protection Enforcement Officer

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 7th DAY OF JULY, 2008.



W. Michael _____
UNITED STATES MAGISTRATE JUDGE

PROBABLE CAUSE STATEMENT

I, United States Customs and Border Protection (CBP) Enforcement Officer J. Poplawski, declare under penalty of perjury the following to be true and correct:

The complainant states that Antonio MARTINEZ-Mares and Benito Avila-Elena are citizens of a country other than the United States; that said aliens have admitted they are deportable; that their testimony is material; that it is impracticable to secure their attendance at trial by subpoena; and that they are material witnesses in relation to this criminal charge and should be held or admitted to bail pursuant to Title 18, United States Code, Section 3144.

On July 5, 2008 at approximately 1140 hours Jay William JOHNSTON (Defendant) made application for admission into the United States at the Tecate, California Port of Entry as the driver and sole visible occupant of a 1999 Blue Chevrolet Pickup Truck. During an inspection on vehicle lane #2 a Customs and Border Protection (CBP) Officer made contact with the defendant. The CBP Officer received negative declarations from the defendant. Defendant presented a copy of his Certificate of Indian Blood bearing the name (Jay William JOHNSTON) as an entry document. Defendant stated he was going to El Cajon and was not bringing back anything from Mexico. The CBP Officer then conducted an inspection of the vehicle and discovered a pair of feet in the back seat. Defendant was then escorted to the security office and the vehicle was taken to the secondary lot for further inspection.

In secondary, Officers located two Hispanic males underneath the rear bench seat. The two males admitted to being citizens and natives of Mexico with no entitlements to enter the United States. The two male adults are now identified as Antonio MARTINEZ-Mares (MW1), Benito AVILA-Elena (MW2).

During a videotaped proceeding, Defendant was advised of his Miranda rights and elected to submit to questioning without benefit to counsel. Defendant admitted knowledge to smuggling aliens in the vehicle. Defendant admitted he was paid \$200 USD up front and was going to receive \$400 USD at the end if successful with the smuggling act for a total of \$600 USD. Defendant stated he was instructed to deliver the vehicle to the McDonalds restaurant on Plaza Blvd off the 805 south. Defendant admits his final destination was the McDonalds restaurant. Defendant admits this was the fourth time he was apprehended for alien smuggling.

On separate videotaped interviews, Material Witnesses declare they are citizens of Mexico who have no legal right enter the United States. Material Witnesses stated they were en route to California to seek employment. Material Witnesses stated they were going to pay a fee ranging between \$1000 USD to \$1200 USD to be smuggled into the United States.

EXECUTED ON THIS 5TH DAY OF JULY 2008 AT 1900.

J. Poplawski / CBP Enforcement Officer

On the basis of the facts presented in the Probable Cause Statement consisting of 1 page, I find probable cause to believe that the defendant named therein committed the offense on July 5, 2008 in violation of Title 8, United States Code, Section 1324.

W. McElwain Jr.
MAGISTRATE JUDGE

7/6/08
DATE / TIME